

**(2006) 02 GUJ CK 0077**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 14128 of 2005**

Suo Motu

APPELLANT

Vs

Ahmedabad Municipal Corpn. and Others

RESPONDENT

**Date of Decision : 15-02-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 21

Gujarat Municipalities Act, 1963 — Section 153, 154, 155, 156, 157

**Citation : (2006) 2 GLR 1129**

**Hon'ble Judges :** Kshitij R. Vyas, J; Akshay H. Mehta, J

**Bench :** Division Bench

**Advocate :** J.B. Pardiwala, for the Appellant; Mitul K. Shelat, for Respondent No. 1, P.R. Nanavati, for Respondent No. 2, P.S. Champaneri, for Respondent Nos. 3, 5, 23-24, 39-40 and 47, R.R. Vakil, for Respondent Nos. 4 and 6, Y.F. Mehta, for Respondent No. 7, H.R. Prajapati, for Respondent No. 8, Shilpa R. Shah, for Respondent No. 10, S.N. Shelat, for Respondent Nos. 11 and 14-16, Shashikant S. Gade, for Respondent Nos. 11, 14 and 16, D.A. Bambhania, for Respondent No. 12, H.L. Patel, for Respondent Nos. 12 and 26, D.C. Dave for Respondent No. 13, V.D. Nanavati, for Respondent No. 17, B.A. Vaishnav and H.S. Munshaw, for the Respondent

## Judgement

Akshay H. Mehta, J.

Rule. Service of rule is waived by the learned advocates for the respective respondents.

1. Ahmedabad is a historical city. It was founded by King Ahmed Shah in or around 1411 AD. Originally the city was confined to area within the fort having different gates, the area which is now known as "walled city", but with the passage of time it has grown rapidly and during last 20 to 30 years the growth is by leaps and bounds. The original city has now become a small portion of the entire city. The growth of the city has embraced in its fold villages which, not very long ago, had their independent identity and entity. They have now merged into the city and some of them have already become posh areas of the city for

quite some time such as Navrangpura, Naranpura, Paldi, etc. They are covered under Ahmedabad Municipal Corporation [AMC] Even during recent past many villages like Memnagar, Thaltej, Vejalpur, Ghatlodiya have been taken into its sweep by the rapid growth and the city has expanded in all directions. Though the Municipal Corporation has got sufficiently large area of 190.84 Sq. Kms., under its jurisdiction, the city is not confined to the Corporation limits alone but it has sprawled unto far flung areas in all four directions beyond the Corporation limits. However, the growth on the eastern and western parts of the city is quite noticeable. The civic bodies of the villages in these areas have maintained their independent identity, but the villages have completely intermingled with the recent growth and urban population. It is stated before us that in the Corporation limit itself there are 7.5 lacs houses and 2.5 lacs industrial houses within the jurisdiction of the Ahmedabad Municipal Corporation. This does not include the houses which are part and parcel of the Ahmedabad City but which do not fall within the Corporation limit. This development includes bungalows, tenements, high and low rise apartments, etc. As per the census figure of the year 2001 the population of the city is in the vicinity of 35,20,085. Such rapid and enormous growth of the city and the areas on its periphery are fraught with many problems, but the serious and alarming problems are pertaining to public health, hygiene and sanitation. The civic bodies including the AMC are found hopelessly lacking in solving these problems due to various reasons which will be discussed during the course of this judgment. Their weaknesses and shortcoming get completely exposed during the monsoon and the aftermath of the monsoon. Within first week of the monsoon, the roads start getting flooded with water, the storm-water drainages start overflowing, the open plots get water logged, the undisposed garbage heaps found on the road side start stinking. In all areas within the city and also outside it and also in the areas near railway tracks which are under the jurisdiction of the Western Railway undisposed garbage get soaked in the water causing grave problem to the public health. To add to this misery, even on the eastern periphery of the city there are large number of industrial houses which discharge their effluent in totally unregulated manner in the canal known as Kharikat Canal and other water discharge courses. This effluent gets mingled with the rain water and as a result of that, these water courses also get overflowed spreading the dirty, obnoxious and poisonous water in the residential areas posing grave danger not only to the human health but even to the domestic animals. It is pertinent to note at this juncture that this city has been declared as Mega City recently. All these chaotic unhygienic conditions naturally lead to spreading various diseases in the city, some of which are very dangerous causing fatality. Falciparum, Malaria, Jaundice, Hepatitis-B were the diseases already known to the residents of this city since they were falling pray to them for the last many years. However, for the past few years, during monsoon and thereafter the dreaded disease dengue keeps on appearing and it remains for several months causing several casualties and constant fear in the minds of citizens. The unfortunate part of it is that young children of the age group of 1 to 15 years are more prone to be the victims of these diseases. Of-course even the

adults and aged people have also been afflicted with these diseases, but compared to the number of young children, the number of adults and aged persons is less.

1.1 The legislature has enacted legislations keeping in view the public health, hygiene and sanitation. It has also taken care to see that the statutes related to the administration of the cities, towns and villages by their respective civic bodies, contain provisions casting duties upon these civic bodies to safeguard the public health and to maintain hygienic condition and the sanitation so as to avoid any hazard to the public health. Statutes like the Provincial Municipal Corporations Act, the Municipalities Act, the Panchayat Act, etc., contain provisions prescribing duties of the civic bodies in this sphere. There are also provisions investing these bodies with power and authority to enable them to discharge their duties smoothly. They have also been equipped with adequate machinery, man power and sources to generate finance which can be utilized for purchasing necessary equipments to discharge these duties. The legislation has also attached great importance to the efficient discharge of these duties by the civic bodies since any failure on that count would constitute an offence which is made punishable with various punishments. Even in the Indian Penal Code there are certain provisions which permit prosecution of defaulting officers. We will discuss these provisions in detail little later.

1.2 During the last monsoon season, which commenced sometime in the 2nd week of June, it came to our notice from various sources but mainly through the reports appearing in the various newspapers that the AMC and the Municipalities and the Gram Panchayats on the periphery of the city of Ahmedabad were totally indifferent to the chaotic condition that had been created on account of water logging, filth, solid waste in the areas giving rise to almost outbreak of an epidemic. The hospitals, private as well as Government and hospitals run by the Corporation, started flooding with patients of dengue, falciparum, jaundice, gastro-enteritis, etc., and people all around the city made hue and cry expressing their total displeasure towards the lethargy and indifference shown by the civic bodies in taking proper steps to tackle this problem and to prevent the spread of these diseases. The city fathers seemed completely oblivious to what was happening around them. Unfortunately, despite such callous attitude on the part of the civic bodies and the grave problem that was being faced by the citizens, neither any NGO nor any group of citizens nor individual approached the Court of law and in particular this Court to obtain appropriate direction on the civic bodies to discharge their functions. We no longer could remain mute witnesses to the apathy of the authorities and agony of the citizens and in particular the young children. Hence we thought it fit to take up suo-motu proceedings to gear up the administration to take prompt action in the direction of improving the sanitary condition of the city and the areas on its periphery and we passed the following Order on 11th July, 2005:-

I. It has come to our notice that after the recent heavy rain fall in the beginning

of the monsoon season of this year, the condition of water-logging has been created in number of areas within the city limits of Ahmedabad Municipal Corporation as well as within the area falling under various municipalities on the periphery of Ahmedabad city and also in the area falling under the Ahmedabad Urban Development Authority [ AUDA]. It has also come to our notice that many places have been littered with filth, garbage and noxious vegetation. This condition is, in all probabilities, likely to pose grave danger to the health of citizens staying in these areas. It has also come to our notice that the Municipal Authorities do not take adequate measures to tackle the situation. It clearly exposes their lethargic approach towards the cleaning operation. This not only renders the public health in jeopardy, but it can give cause for wide-spread epidemic. The municipal laws in the State impose duty on the Civic Bodies like the Ahmedabad Municipal Corporation, Municipalities and the AUDA of cleansing public streets, places and sewers at all spaces not being private properties which are open to the enjoyment to the public whether such places vested in them or not, removing noxious vegetation and abating all public nuisances. They are also invested with adequate power to enable them to discharge these duties. However, it appears to us that they have failed in doing so. When the public at large is likely to be adversely affected due to callous attitude of the Civic Bodies, it is incumbent upon this Court to, issue notice to them, summon them and direct them to discharge their duties forthwith.

II. In view of the above, we direct the office to issue notices to the following Civic Bodies requiring their Chief officers or Secretaries or concerned Officers to remain present before this Court on 20th July, 2005:-

1. Ahmedabad Municipal Corporation Danapith, Ahmmedabad.
2. Ahmedabad Urban Development Authority Usmanpura, Ahmedabad
3. Chandlodia Municipality
4. Ghatlodia Municipality
5. Jodhpur Municipality
6. Ranip Municipality
7. Vejalpur Municipality
8. Memnager Municipality.

We also direct the office to serve the notices through special messenger of the High Court.

Since at the relevant point of time we did not have business of hearing public interest litigation assigned to us and since these proceedings were in the nature of public interest litigation, after our taking the cognizance and issuing notices to various parties, the office had put the matter before the Learned Chief Justice to obtain appropriate orders whether to place this matter before the Regular Bench

taking up Public Interest Litigation matters then or before us. The Learned Chief Justice vide direction dated 19/07 /2005 directed the office to list this matter for hearing before us and that is how now we have been seized with this matter and we have directed it to be treated as part-heard.

2. On the returnable date i.e. 20th July, 2005 the matter was again listed before us for hearing and in response to the notices issued by us, Ahmedabad Municipal Corporation, Ahmedabad Urban Development Authority [AUDA] and the various Municipalities falling within the jurisdiction of AUDA, have remained present before us. During the course of hearing, several other Government agencies appeared to be necessary parties and, therefore, we issued notices to the National Highway Authority, Manager ? Western Railway, etc. On that day, the experts of the Municipal Corporation remained present and apprised the Court about the causes of diseases like dengue, falciparum, etc., the means and ways to tackle and the efforts that were being initiated by the Corporation to curb this menace. We were also informed that a team of experts from National Institute of Virology from Pune had been to City to advise and help the Municipal Corporation to tackle dengue and to bring it under control. However, we thought it necessary to form Committees which could visit various parts of the entire city to have on the spot inspection of the situation prevailing there and to have the places photographed, videographed and to draw necessary panchnama with the aid of police and to submit detailed report to this Court. We also appointed Mr. JB Pardiwala, learned advocate to assist the Court. The Committee visited the areas several times and submitted before us reports of each visit. We will refer to these reports shortly.

3. We may now deal with certain legal provisions which relate to the public health and hygiene and the duties cast upon the civic officials to safeguard and take adequate care of them. The Gujarat Municipalities Act, 1963, the Bombay Provincial Municipal Corporations Act, 1949 ["BPMC Act"] and the Panchayats Act, 1993, contain such provisions. So far the Gujarat Municipalities Act [Municipalities Act] is concerned, Section 2(5) defines Sdangerous disease?. It means cholera, plague, small-pox and any endemic, epidemic or infectious disease by which the life of man is endangered. Section 2(15) defines Snuisance?. It includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smelling or hearing, or may be dangerous to life or injurious to health or property. The Municipalities Act also enjoins certain duties on the civic bodies with a view to prevent spread of dangerous disease or causing of nuisance. Chapter VI of the Municipalities Act prescribes functions of the municipalities. Section 87 casts duty on every municipality to make reasonable and adequate provision for the matters enumerated therein within the limits of the municipal borough. Clause (c ) of Section 87 relates to sphere of public health and sanitation. There are different items prescribed under this clause. Sub-clause (f) deals with cleansing public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public whether such places are vested in the

municipality or not, removing noxious vegetation and abating all public nuisances. Sub-clause (h) deals with disposing of night soil and rubbish and if so required by the State Government, preparation of compost manure from such night soil and rubbish. Section 91 of the Municipalities Act deals with discretionary functions of the municipalities. Clause C thereof, deals with public health and public sanitation. Sub-clause (d) of the same, permits a municipality to establish and maintain a farm or factory for the disposal of the sewage. Chapter XI of the Municipalities Act prescribes the powers of the municipalities and also describes the offences. Part (7) of this Chapter deals with the powers of the municipality for the prevention of nuisance and part (10) deals with prevention of dangerous diseases.

3.1 So far BMC Act is concerned, Section 2(16) defines Sdangerous disease?. The definition is almost the same as contained in Section 2(5) of the Municipalities Act. Over and above that, it also includes the disease that may be declared as such by the Corporation by issuing public notice from time to time. Section 2(60) defines Ssewage?. It means night-soil and other contents of water closets, latrines, privies, urinals, cesspools or drains and polluted water from sinks, bath rooms stables, cattle sheds and other like places and it also includes trade effluent and discharges from manufactories of all kinds. Chapter XII contains provisions regarding drains and drainage. This chapter contains Sections 153 to 188, which deal with Municipal Drains, Drains of Private Streets and Drainage of Premises, Disposal of Sewage, Water-closets, Privies, Urinals, etc., Inspection and General Provisions. Chapter XVIII contains Sanitary provisions. Section 290 to Section 326 are incorporated in this chapter. It is again divided into several parts, but relevant for the purpose of this judgment is SScavenging and Cleansing? and the relevant Sections are 290 to 295, which deal with Inspection and Sanitary Regulation of the Premises, Regulation of Factories, Trades, etc., Prevention and Checking Spread of Dangerous Diseases and Special Sanitary Measures.

3.2 Similarly, such provisions are also contained in the Panchayats Act. Section 99 defines Administrative powers and duties of Panchayats. It states as under:-

Subject to the provisions of this Act it shall be the duty of each panchayat to make in the area within its jurisdiction, and so far as the fund at its disposal will allow, reasonable provisions, in regard to all or any of the matters specified in Schedule I.

Schedule-I contains matters in respect of which it is the duty of village panchayats to make provisions. Item No. 1 of Schedule-I relates to making provisions in the sphere of sanitation and health. The similar duty is cast upon the Taluka Panchayat and the District Panchayat. These provisions enumerate various aspects of sanitation, drains and drainage and the public health and prescribe duties to be performed by the respective civic bodies. They also contain the conferment of power and authority on these civic bodies to enable them to discharge these duties efficiently. They also provide for the machinery to carry

out the functions required for discharging these duties. Thus, these provisions are a complete code by themselves. It is, therefore, the bounden duty of all the civic bodies to perform these duties diligently, efficiently and in such manner so as to completely fulfill the objects for which these provisions have been made. However, as stated above, we found that these civic bodies, even during critical period, behaved as if these provisions never existed in the statute books. That is the main reason why we have decided to take up this issue as suo-motu public interest litigation. During the visits made by the different committees constituted by our order dated 20th July, 2005 to inspect areas under all the three civic bodies, namely the Corporation, the Municipalities and the Gram Panchayats, they found very deplorable and grim picture exposing totally indifferent and callous attitude of the civic bodies towards the public health, hygiene and sanitation.

3.3 We would very briefly incorporate in this judgment what was found by the committees during their visits, for which they have prepared the exhaustive reports containing photographs of the places and the remarks made by the committees. The committees, during their visits to areas under the Municipal Corporation, Vejalpur Municipality, Vastrapur Municipality, Bopal Gram Panchayat, Thaltej Gram Panchayat, Sarkhej Gram Panchayat, found that there was water logging in open plots, on roads, undisposed garbage littered everywhere completely soaked in the monsoon water, emanating foul smell. These committees also found that even the private open plots owned by institutions like Ahmedabad Education Society, the University were completely water logged providing breeding place for the mosquitoes. The committees even visited schools situated within the Corporation limits and outside the limits. There also the condition was very pitiable. In many schools, the overhead tanks were found to contain all sorts of rubbish and it looked that as if these overhead tanks were never cleaned before. The drinking water meant for the small children was found insect infested. Many of the school compounds were littered with filth and garbage and also there was water logging. We were, therefore, constrained to issue notices to Director of Higher Education, the concerned District Education Officers as well as Local School Boards. Even the area under the Railway Department was no better than other areas. We were shocked to receive report and see the photographs of the pitiable and miserable plight of the Civil Hospital, Ahmedabad, which is considered to be one of the biggest hospitals of the country. The committee found that the Civil Hospital complex was having heaps of undisposed garbage at different places and especially opposite MRI Centre and there was extensive water accumulation providing breeding ground to the mosquitoes. Water had turned reddish in colour. The committee also found that one doctor and one student of the Medical College in the Civil Hospital were afflicted with dengue. The visits to industrial areas like Odhav GIDC Estate, the area near Kharikat canal, the Khokhra Amraiwadi localities revealed that trade effluent and solid waste posed grave danger to public health and hygiene. Even the multi-storeyed hospital building of ESI Corporation was not lagging behind in lack of sanitary condition and unhygienic atmosphere. The photographs of the

inside of this hospital perturbed us considerably. Even the photographs exposed the precarious condition of the building itself. During the hearing we learnt that the said hospital was taken over by the Central Government under the Employees State Insurance Scheme from the State Government. In view of this, we issued from time to time various directions to the concerned authorities to take up the cleansing operation on war footing and also to restore cleanliness not only in the public streets and on the roads but even in the schools, hospitals and other public places. We were even constrained to give notices to civic bodies like Vejalpur Municipality, Bopal Gram Panchayat, Sola Gram Panchayat, etc., to show cause why prosecution should not be instituted against the concerned officers for not properly complying with the directions given by this Court from time to time. The orders which have been passed by us on earlier occasions together with the reports of the committees give complete picture of the miserable plight of the citizens and the criminal negligence on the part of the authorities. They prompt us to give immediate directions as well as the directions for the future with a view to see that such conditions are not created in future. Of-course, the various civic bodies have also filed their affidavits and have brought to our notice the difficulties faced by them in performing the duties with regard to sanitation and drainage. The first and foremost being the financial constraint. The municipalities' main grievance is that with the abolition of octroi, their main source of income has been lost and now they have to completely depend upon the amount collected by way of property tax and other such taxes. It is also their say that people are not cooperative at all in the matter of payment of taxes. The grant received from the Government, according to them, is not adequate enough and most of it is spent towards the payment of salary to the employees of the municipality. Their say is that because of the shortage of funds, they are not able to increase the staff in the Sanitation Department and also purchase modern equipments to clean the areas under them properly and quickly. They have also projected the difficulty that even if the garbage is lifted from the areas falling within their jurisdiction, the same has to be dumped elsewhere. This garbage is in tons and there is no dumping ground available within reasonable distance. They do not have even the proper means of transport to remove the garbage. In view of this, we have given interim directions to the AUDA as well as the Government to render financial assistance to these civic bodies and also to render them adequate help in cleansing operations.

3.4 At this juncture particular reference to area under Bopal Gram Panchayat is required to be made. It is on the western side of the main City beyond the Sarkhej-Gandhinagar Highway and which can be safely described as the beginning of twin city of Ahmedabad. There are all categories of residential accommodations, large commercial complexes, restaurants and even hospitals. However, it is also the area which is worse affected by the adverse conditions in respect of sanitation, hygiene, discharge of rainy water, disposal of garbage and solid waste and also the discharge of domestic effluent and the night-soil. Despite our repeated directions and even issuance of show cause notice with

regard to prosecution of concerned officers, the local civic body, namely Bopal Gram Panchayat has not been able to effectively deal with sanitation problem. It was, however, brought to our notice by the authorized officer of the said Panchayat that it has got tremendous financial constraints and with limited finance, it is not able to cope up with the situation and tackle it as effectively as desired by this Court. He has stated that there is no drainage system and the domestic effluent and night-soil, etc., are being discharged into cesspools. He has also stated that because of the less absorbing capacity of the cesspools, even without monsoon, they keep on overflowing, spreading the dirty water on private premises as well as on public road and in the monsoon the conditions get worsened. He has further stated that if the AUDA is directed to permit the Bopal Gram Panchayat to connect the drainage line with the AUDA's drainage line, the problem can be solved. Mr. PR Nanavati, learned advocate appearing for the AUDA has of-course posed many difficulties in having such arrangement. However, to have the proper view on this issue, we had summoned Mr. Kailashnathan, the Chairman of the AUDA, who is also the Principal Secretary, Urban Housing and Urban Development Department. He pointed out to us that considering the haphazard growth of Bopal there is hardly any scope for their internal drainage net-work which could eventually be connected with the main drainage of the AUDA. He also pointed out that the existing drainage line of AUDA will not be able to sustain additional load of Bopal. However, he has suggested that there could be a separate project carried out to have a parallel drainage line along with AUDA and the AUDA is prepared to render all necessary help. In his opinion, for the present, the panchayat should see to it that the existing cesspool system is improved to tackle the immediate problem since the project of laying down separate drainage line would take some time. The main reason for the problem created in Bopal area appears to be the indiscriminate NA Permissions having been granted by the concerned authorities to utilize the agricultural lands for building activity. It also appears that the property developers, to earn their immediate benefits, did not foresee the difficulties that are now being faced by the people of Bopal. We have, therefore, issued notice to the District Development Officer of Ahmedabad District Panchayat, who is the authority to grant NA Permission, to find out from him in what circumstances such permissions have been granted. The District Development Officer Mr. RN Joshi has filed his affidavit dated 27th January, 2006 explaining the criteria to be followed while granting the NA Permissions. We have also heard the learned advocate Mr. Champaneri for the said District Development Officer and we have also perused the affidavit. However, we are not much satisfied with either the submissions of Mr. Champaneri nor with the contents of affidavit and it clearly appears to us that for the present some brake is required to be applied to granting of NA Permissions in these areas so as to prevent aggravation of problem.

4. In the foregoing paragraphs we have discussed the provisions of law and the condition of different areas visited by the Court committees. It is clear from the

above discussion that though the civic authorities have been entrusted with certain important duties and they are adequately equipped with the power and the means for the efficient discharge of these duties, they have miserably failed, mainly on account of lethargy and lack of zeal on the part of the work force. It also reveals that for one reason or the other persons at the helm of administration of these civic authorities have totally ignored such attitude of the subordinates. When the duty coupled with power it is required to be performed, it has to be performed in a manner in which it has been prescribed to be done. Any indifference on the part of either the authorities or the work force concerned has to be looked upon very seriously. The civic authorities cannot shirk their responsibilities of taking proper task from the work force entertaining apprehension that any insistence upon the performance of duty by them would antagonize the workers and prompt them to revolt against the superiors. If a worker is not scavenging properly it is not his fault alone, but it is equally the fault of his superior, who has to take duty from him. The aforesaid picture would show that the entire set-up of the local authorities has been responsible for the non-performance of various duties prescribed under the statute. This is understandable and impermissible. Every member of the set-up of the civic bodies owes accountability to the citizens and any act or omission which may jeopardize the public health and public hygiene will constitute misconduct and such member will expose himself or herself to initiation of disciplinary proceedings against him or her.

4.1 Under Article 21 of the Constitution of India the right to life is guaranteed in any civilized society. Article 21 with the expansion of its scope has now imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity. Such obligations include maintenance and improvement of public health, elimination of water and air pollution and providing hygienic conditions, within the area under them. The right to life would also take within its sweep right to decent environment and reasonable accommodation to live in. It would mean that even if a house is comfortable considering the inner facilities, the living in such house may become miserable on account of the dirty environment and the unhygienic condition prevailing outside it. Like the State, every civic authority is clothed with power and equipped with means to ensure the citizens better enjoyment of life and dignity and if it fails to provide them, it would violate Article 21. It is the function of the local authority i.e. the municipal authority to maintain cleanliness by timely disposal of the garbage and solid waste and to resolve the difficulties of the citizens vis-a-vis water logging, pit falls, mud, etc. When they fail to discharge these functions, this Court is well within its bounds to give proper and adequate directions to the civic authorities.

5. In light of the aforesaid situation, we have also invited suggestions from the parties in respect of the public health, sanitation, the measures to be adopted for carrying out cleaning operations, to maintain vigil over sanitary condition, etc. Mr. Pardiwala and Mr. SN Shelat [the then Advocate General] have brought to our

notice several judgments of the Apex Court rendered in the public interest litigation and dealing with the issues of ecology and non-performance of the mandatory duties by civic body like Municipal Corporation. By way of suggestion, Mr. Pardiwala has drawn our attention to the system adopted by the Ghatlodia Municipality and has stated that in comparison to other areas visited by the committees under AMC and different municipalities and Gram Panchayats, the area of Ghatlodia Municipality was absolutely clean and free from water logging and garbage dumping. He stated that the said Municipality has given contract of scavenging activity to private agency and there is door-to-door collection of garbage and regular cleaning of the roads and other public places and there are proper outlets even for draining out the rain water, as a result of which, barring at one or two places, there is hardly any water logging or collection of garbage. It is, therefore, suggested that the AMC and the other Municipalities can also follow the suit and make a gradual or phase-wise introduction of this system.

6. We have closely considered the various material that has been provided to us by the parties, the material collected by us on our own, the decisions of the Apex Court to see which of the directions given by the Apex Court in respect of City of Delhi can be applied to local conditions and we have also kept in view the aspect whether the directions that may be given by this Court can be feasible and the local bodies will be able to carry them out even by the finance which is available with them or whether they would need additional financial help from the Government.

7. Now, in view of the aforesaid, it appears to us that the following directions are required to be given to the various civic bodies:-

I. Directions to the hospitals run by the management administered by the Government, semi-Government or local civic bodies, having 30 or more beds:

i. Regular scavenging of the entire complex and collection of garbage to be done and the entire complex including the compound to be maintained clean and garbage free.

ii. Installation of litter boxes/containers at different points in adequate number.

iii. Prompt and efficient drainage to be maintained to prevent accumulation of water during monsoon and to discharge domestic effluent.

iv. To prohibit smoking and chewing tobacco/pan, Gutka, etc. in the hospital premises and to display the warning at conspicuous places in the hospital and the violation of it should be visited with fine.

v. To construct and instal incinerators in all such hospitals and nursing homes or to have equally effective alternative arrangement.

vi. Government to issue notification covering all such hospitals/nursing homes other than the Government, Semi-Government hospitals and hospitals run by the civic bodies like Municipal Corporations and Municipalities to make their own

arrangement to construct and instal incinerator or to have equally efficient arrangement for the disposal of the garbage and the hospital waste. Such notification to be issued and adequate publicity be given to it as expeditiously as possible and in any case not later than 30th April, 2006.

vii. Upon the Government issuing such notification, the AMC should give notices to all such hospitals as mentioned in clause vi.

viii. Gujarat Pollution Control Board [GPCB] to make regular inspection of the hospitals of both the categories once in three months and to place the inspection report on the record of this petition.

ix. In case the private hospitals are permitted to use facilities, namely, collection, transportation and disposal of garbage and hospital waste provided by the Government/civic body hospitals, the management of the private hospitals to be asked to pay suitable charges for the service rendered in accordance with law.

II. So far the civic bodies are concerned, we issue the following directions:-

i. We direct that they shall construct proper drainage net-work and to regularly carry out its cleansing and de-silting operation, especially immediately prior to commencement of the monsoon season to avoid its choking and the resultant accumulation of water.

ii. To provide public latrines, urinals and similar conveniences with modern facility and to maintain them clean and in proper conditions.

iii. To evolve a proper cell for regularly scavenging the streets, removal and disposal of garbage and solid waste and other obnoxious and polluted matters.

iv. To erect adequate number of garbage collection centres and to have adequate number of pick up vans with adequate number of garbage collectors.

v. To see that the solid waste and garbage are not thrown or littered outside the collection centres.

vi. Area-wise collection centres to be created.

vii. AMC to introduce phase-wise distribution of garbage bags per family for disposal of the domestic garbage. Such bags to be emptied either at the collection centres or directly in the pick up vans and to be returned for re-use.

viii. To construct pavement on both the sides of the roads which can prevent water logging, dust and to avoid throwing of solid waste by the public.

ix. They should ensure that the provisions relating to the sanitation and public health are properly complied with by the officials and the various duties are discharged efficiently.

x. The civic authorities to designate Competent Officers not lower than of the rank of Sanitary Superintendent or equivalent post to levy and recover charges

and from any person littering or violating the provisions of the Acts, bye-laws and regulations relating to sanitation and public health. For this purpose the authorities concerned should prepare and publish for the information of the public at large the scale of such charges, costs as may be levied and recovered in respect of the diverged acts of commission/omission. Such Officers may be conferred with the authority to collect the fine on the spot.

xi. Local authorities including the Railway to take appropriate steps for preventing encroachment or unauthorized occupation on public land for the purpose of dwelling resulting in creation of slum. The local authorities also should take appropriate steps to improve the sanitation in the existing slums till they are removed and the land is re-claimed.

xii. Local authorities to take pre-monsoon, mid-monsoon and post monsoon measures regularly every year to ensure that health and sanitation are adequately maintained in the city during monsoon and post monsoon months.

A. Pre-monsoon measures to be undertaken from February -

a. Steps to be taken for cleaning underground drainage line and storm water drains to be de-silted, repairs of leaking pipelines to be undertaken. All garbage to be removed with a view to avoid accumulation of wet solid waste during monsoon.

b. Sprinkling/spraying effective insecticides to prevent mosquito breeding.

c. To give adequate publicity to the measures/precautions to be taken by the public to prevent mosquito breeding and to avoid accumulation of water on private properties.

B. Mid-monsoon measures:-

a. Monsoon normally starts in the 3rd week of June. All adequate steps to tackle the situation due to the heavy rains to be taken. Water from water logged areas to be removed as soon as possible, especially the water logging in low lying areas.

b. Sprinkling/spraying effective insecticides to prevent mosquito breeding.

c. To give adequate publicity to the measures/precautions to be taken by the public to prevent mosquito breeding in the accumulation of water on private properties.

C. Post monsoon measures:-

a. To remove all the muds and slush and garbage. The catch-pits to be cleaned regularly to control mosquito breeding in water logged areas.

b. To establish effective public grievance redressal mechanism at the ward level, zonal level and city level.

c. To take steps to prosecute persons responsible for causing nuisance endangering public health and also to resort to other remedies as provided under the Acts for the abatement of the nuisance. xiii. Over and aforesaid directions prescribed for the civic bodies, the municipalities and the Panchayats forming part of AUDA and the concerned municipalities should see that the stretch of open land as also the service roads on both the sides of SG Highway is kept clean and garbage free.

xiv. The municipalities and the panchayats to see that the drain and disposal of the domestic effluent and the night waste are properly done. They should also appoint agencies to create the cesspools at subsidized rates till such time the alternative arrangement to the cesspool is made.

### III. Directions to the Railway Department:-

i. It is directed to see that the area under its jurisdiction is not converted into dumping solid waste and garbage. It should take adequate measures to prevent such creation of nuisance by the public.

ii. To regularly scavenge the area under it falling in the City and the AUDA limits and to keep it clean and free from garbage.

### IV. Directions for the Police Department:-

i. To dispose of unclaimed seized vehicles lying in the police station or police station compounds unless they are needed for the purpose of any trial in the Court and where there is no possibility of any owner coming forward to claim the possession.

ii. To prosecute under the provisions of the Penal Code the persons causing nuisance and doing any such activity which pollutes the sanitation or causes hazard to the public health.

### V. Directions to AUDA:-

i. AUDA to monitor the cleansing operations in the areas under it.

ii. To re-section Gota ? Godhavi canal.

iii. To see that during monsoon the Kharikat canal does not overflow.

iv. To give notices to the restaurants and the party plot owners if they are found to throw their solid waste on the open land on the sides of the SG Highway.

### VI. Directions to the Education Department:-

To carry out regular inspection of the premises of the schools keeping in view the aspects of sanitation and the health of the students. In case of any non-compliance with the sanitary provisions by the school management, adequate steps including even the criminal prosecution to be taken against them and no leniency to be shown in such matters.

## VII. Directions to the Government:-

i. To provide all required assistance including finance to the civic bodies to carry out the aforesaid directions.

ii. To provide zone-wise dumping sites for the disposal of garbage and solid waste.

iii. To provide medical assistance in the event of outbreak of monsoon diseases and to render all assistance to the civic bodies to curb the menace of such diseases.

iv. As stated above, the Officer of Bopal Gram Panchayat brought to our notice the difficulties faced by the residents of that area for want of drainage facility and even proper alternative arrangement for disposal of the domestic effluent, the night soil and during monsoon, the rain water. The cesspools within short time reached the absorbing capacity and they start overflowing. This has happened on account of indiscriminate grant of NA Permissions and the resultant construction activity without there being proper sanitation facility, road facility and transport facility, etc. It was also brought to our notice that because of the judgment of this Court rendered in Special Civil Application No. 5735 of 2004 the authorities are unable to refuse NA Permission. We have perused the said judgment. In the said case all these factors were never brought to the notice of the learned Single Judge who gave the said judgment. It is solely confined to the facts of the said case. However, considering the peculiar situation that is being created in Bopal, especially in monsoon, certain directions are required to be given. We have already highlighted the facts that have come to our notice from time to time in the present proceedings since they are alarming and require consideration at the Government side. The Government has to be alarmed to the dismay state of facilities for sanitation as reflected from the stand taken by the District Development Officer, District Panchayat, Ahmedabad, the Bopal Gram Panchayat and the AUDA. During discussion, the stand taken by various authorities can be summarized as under:-

(1). There has been haphazard development in Bopal which obstructs even laying down of internal drainage pipeline.

(2). The AUDA is not prepared to provide drainage connection to its main pipeline, inter-alia on the ground that Bopal Panchayat is not part of the Ahmedabad Urban Development Area, the pipes laid by AUDA has no further capacity to receive effluent from the said area and that a long term provision may have to be contemplated if the AUDA were to undertake this exercise.

(3). NA permission and Building Use permission have been granted without verification about sanitation facilities to be provided for in the residential buildings, cesspools are not maintained and are not provided for. During rain fall this year Bopal was worst affected area and required attention by those on whom responsibility lay under various statutes on the subject.

(4). Bopal Panchayat claims that it has no financial resources for providing sanitation facility by laying down pipe lines. It is suggested by AUDA that it is not possible to do so having regard to the topography of the area and that if the pipe lines were to be laid, it would require discharge of effluent some where away 10 to 15 Kms., from Bopal. The revenue collection from taxes levied are not enough to meet with the requirement. It has been suggested by their Counsel that the provisions of the Town Planning Act may be applied and Area Development Authority be set up and development plan be framed for the area. Of-course, the State Government shall consider the suggestion that has come on behalf of Bopal Panchayat.

(5). The State Government is vitally concerned since through local self Government it has to ensure quality of life of the people i.e. at-least pollution free atmosphere. In the back drop of above facts, we would be justified if the following directions are given:-

i. The State Government through the Secretary, Urban Development Department, the Secretary, Panchayat and the Secretary Health, are directed to consider the remedial measures to be taken for chaotic situation brought about because of apathy of the concerned local authority in the planned development of Bopal Township. The Government must come out with remedial measures within the time frame so that before the on-set of next monsoon i.e. 1st of June, 2006, the cesspools are properly maintained and are provided for, if not provided, and/or that internal pipe lines are laid for the discharge of the domestic effluent.

ii. The Government should also consider as to whether NA Permissions in future would aggravate the worsening of the situation that the residents of Bopal are facing and till such time the proper remedial measures are taken for discharge of domestic effluent, no further grant of NA Permissions should be made under the provisions of the Bombay Land Revenue Code.

8. We earnestly hope that whatever the directions that have been given are properly complied with regularly and with all sincerity. The issue involved in this litigation is very sensitive and concerning the health and life of the citizens. It is a matter of utmost dismay and regard that with every monsoon there are number of casualties on account of drainage diseases like Falciparum, Dengue, Hepatitis-B, etc. Unless and until the public awareness is created and proper civic sense is inculcated, such problems are bound to remain. But at this juncture, the role of the civic bodies becomes very important and they should strive to see that even that even during monsoon and thereafter the cleanliness is properly maintained and the measures with regard to sanitation, hygiene and public health are properly taken so that innocent citizens and especially the children do not be the victim of such dreaded diseases and lose their lives. The authorities also should educate the people well in time even by door-to-door campaign during pre-monsoon period and also during the monsoon to prevent any indifferent attitude of the people towards maintenance of cleanliness and

unnecessary water accumulation on private properties, which could provide ideal breeding places for the mosquitoes generating diseases like Dengue, Malaria, Falciparum, etc. They should also give adequate publicity on every means of media. The public authorities have to carry out all these duties which have been prescribed in the Act, the Rules and the Bye-laws with all earnestness and sincerity and in right spirit. They cannot avoid discharge of such duties on the pretext that there are no adequate means available with them, the problem is of enormous magnitude and with limited sources it is not possible to tackle the problem, that there are financial constraints, etc. The Apex Court in the case of Dr. B.L. Wadehra Vs. Union of India and others, and in the case of Alm ITR a H. Patel and Anr. v. Union of India and Ors., AIR 2000 SC 2017 has clearly said that non-availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery, etc. cannot be pleaded as ground for non-performance of the statutory duties by the civic authorities. However, we have taken also judicial notice of the fact that with the abolition of the octroi in the municipal areas, the municipal authorities have been suffering financial crunch and for that precise reason, in our order dated 28th December, 2005, we have directed the Government and the AUDA to lend them adequate financial support to procure adequate means for carrying out cleaning operations. By this judgment also we direct the Government and the AUDA to duly examine the claims of the municipalities or the panchayats seeking financial assistance and if found proper, to render them such assistance.

9. Before parting with this judgment, we express our sincere thanks to the members of the Committees, to the learned counsels and to Mr. JB Pardiwala, who all have assisted us in these proceedings and to enable us to prescribe various measures for the civic authorities. We may also clarify that any violation of the aforesaid provisions will amount to committing contempt of the Court and the concerned person will make himself or herself liable to be proceeded against under the provisions of the Contempt of Courts Act. With this judgment, the suo-motu proceedings stand terminated. We, however, direct the office to place this matter before us on 2nd May, 2006 to have the assessment of the compliance of directions issued by us in this judgment.